

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from April 27, 2017, the date of OWCP's last decision, was October 24, 2017. Since using October 27, 2017, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is October 24, 2017, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

sprain (File No. xxxxxx253).² He has undergone multiple bilateral upper extremity surgical procedures. Appellant received wage-loss compensation for temporary total disability on the periodic compensation rolls.

By decision dated February 21, 2014, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It based its decision on the June 24 and September 30, 2013 reports of Dr. Hythem Shadid, a Board-certified orthopedic surgeon and impartial medical examiner. Dr. Shadid found that appellant's accepted bilateral upper extremity and cervical conditions had resolved. He also found that appellant had nonwork-related bilateral rotator cuff tendinopathy, which precluded repetitive overhead activities and repetitive lifting of more than 20 pounds.

Appellant requested an oral hearing, held telephonically on July 21, 2014. In an August 29, 2014 decision, a representative of OWCP's Branch of Hearings and Review affirmed the February 21, 2014 decision. Appellant subsequently requested reconsideration and OWCP denied modification by decision dated November 25, 2015.

On November 22, 2016 appellant again requested reconsideration.

Appellant also provided a December 11, 2015 statement disputing the sufficiency of Dr. Shadid's examination and the accuracy of his examination. In his November 22, 2016 request for reconsideration, he explained that there was an error in Dr. Shadid's report and that it was not accurate as he did not appear to be aware of appellant's back pain and conditions. Appellant noted that Dr. Shadid found no mention of any back pain or physical findings that would cause one to suspect a back injury. He also noted that Dr. Shadid indicated that the first time back pain was mentioned was on August 12, 2010. Appellant explained that this was inaccurate as he was taken off work on multiple occasions due to back problems dating all the way back to 2006. He provided documentation from Dr. Bruce J. Montella, a Board-certified orthopedic surgeon, dating back to 2006, showing that he had a lumbar disc herniation, as well as neck pain. Appellant also submitted new medical evidence to support that he had continued back problems and that the report of Dr. Shadid should not be given special weight as it was inaccurate. They included magnetic resonance imaging (MRI) scans from 2013 and 2016, which revealed findings to include a herniated disc at L5-S1. The new reports from Dr. Montella were dated August 11, 2014 and January 12, 2015.

By decision dated April 27, 2017, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant review of its prior decision.

However, OWCP did not address or indicate awareness of appellant's December 11, 2015 statement and the additional evidence submitted. Inasmuch as the Board's decisions are final as to the subject matter appealed, it is crucial that OWCP address all relevant evidence properly submitted to OWCP prior to the issuance of its decision.³

² OWCP combined the two above-noted claims and designated File No. xxxxxx784 as the master file.

³ 20 C.F.R. § 501.6(c); *see William A. Couch*, 41 ECAB 548, 553 (1990).

For this reason, the case will be remanded to OWCP to enable it to properly consider all of the evidence submitted prior to the issuance of its April 27, 2017 nonmerit decision. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the April 27, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further action consistent with this order.

Issued: September 6, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board